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**From:** Bausch, Carl (FTA)  
**To:** Matley, Ted (FTA); Sukys, Raymond (FTA); Borinsky, Susan (FTA); Barr, James (FTA); Zelasko, Elizabeth (FTA)  
**CC:** Marler, Renee (FTA); Carranza, Edward (FTA)  
**Sent:** 3/23/2010 7:24:40 AM  
**Subject:** RE: Two Hawaii Letters

Thanks for the information, Ted. I understand the concern regarding late-filed comments, but I think by formally accepting or rejecting comments we may be creating an addition to the process that is neither called for in nor necessary under the implementing regulations or our procedures; in so doing, we may be making more work for ourselves. The long-standing practice, consistent with NEPA's purpose, has been to treat late-filed comments to the extent possible in the circumstances. Formal acceptance or rejection of comments can lead to results that are contrary to this practice, will invite appeals to higher authorities (as was the case here), and should be discontinued; one person's view, of course. Thanks again. Carl

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**From:** Matley, Ted (FTA)  
**Sent:** Tuesday, March 23, 2010 1:41 AM  
**To:** Sukys, Raymond (FTA); Borinsky, Susan (FTA); Bausch, Carl (FTA); Barr, James (FTA); Zelasko, Elizabeth (FTA)  
**Cc:** Marler, Renee (FTA); Carranza, Edward (FTA)  
**Subject:** RE: Two Hawaii Letters

All, I received the following documents from the City, which I believe are the relevant ones to the subject. They include the meeting notes from the City's meeting with the residents, a copy of their staff notes on the letters, and a copy of the matrix that provides point-by-point assessment of how the issue is addressed in the draft EIS section.

As to the adequacy of this response you can make your own determination, but it does seem (to me anyway) that many of the concerns are either very general (such as transit causes crime) or may not be supported by the analysis (such as concerns over sound impacts), and that the City did make some effort to respond.

As Jim notes, the letter from Peter indicated that although the public comment period was closed, we expected their concerns would be addressed by the FEIS. We specifically did not state we would accept their comments formally as part of the comment on the DEIS, as we felt this was procedurally incorrect.

If I remember correctly, our reasoning was:

1. If FTA responded directly to the content of their issues, we would be creating a duplicative administrative record.
2. The City was concerned about opening up the comment period 6 months or more after it closed, as this would leave the comment period essentially open ended. At the time we felt we were closer to the end so this was a legitimate concern.

There have been other letters of various types submitted well after the end of public comment. If we did accept these comments as formal comments on the DEIS, we would probably have to recover and examine each of these other comments to make sure they weren't also a candidate to be accepted as formal comment.

I'm also wondering, while our policy has been to formally accept comments that arrive a reasonable amount of time (such as a few days or weeks) after the close of public comment (as it was in this case), it might be harder characterize the acceptance of letters received 6 months or more late as a simple short de-facto extension of the public comment period. If we accept these, would we have to announce publicly that we are accepting comments on the DEIS to any late commentators who still want to respond? Would we need to define a time up until which we will be accepting comments? I'm fairly certain the City will continue to express their earlier concerns about opening up the comment period.

Also, I'm not sure if it matters, but we would be contradicting what was in the letter Peter sent if we now accepted their comments formally as part of the DEIS process.

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**From:** Sukys, Raymond (FTA)  
**Sent:** Fri 3/19/2010 4:27 PM  
**To:** Matley, Ted (FTA)  
**Cc:** Marler, Renee (FTA); Carranza, Edward (FTA)  
**Subject:** FW: Two Hawaii Letters

Ted, please look into this and reply to everyone. Thx, Ray

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**From:** Borinsky, Susan (FTA)  
**Sent:** Friday, March 19, 2010 4:21 PM  
**To:** Marler, Renee (FTA); Sukys, Raymond (FTA); Carranza, Edward (FTA)  
**Cc:** Barr, James (FTA); Bausch, Carl (FTA)  
**Subject:** FW: Two Hawaii Letters

Dear Friends in San Francisco,  
Before it slips my mind, I want to make sure that we have taken care of the subject raised during the recent visit by Honolulu Councilmembers here in DC, that is: Inclusion in the FEIS of a response to the late comments on the DEIS received from the Citizen Group (condominiums?) mentioned by Councilmember Ann H. Kobayashi.

Jim Barr provided the information below on this matter. Is this the same subject?

Please confirm the status of FTA's response to the inquiry from these commenters. If I gave wrong information to Ms. Kobayashi, and the comments from the group she represents will not be included and addressed in the FEIS, please let me know. Hopefully, time permits this to be addressed, if it hasn't been already. Thanks.  
Susan

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**From:** Barr, James (FTA)  
**Sent:** Wednesday, March 10, 2010 9:34 AM  
**To:** Borinsky, Susan (FTA)  
**Cc:** Bausch, Carl (FTA); Matley, Ted (FTA); Sukys, Raymond (FTA); Zelasko, Elizabeth (FTA)  
**Subject:** Two Hawaii Letters

Susan:

As a follow-up to our meeting yesterday with the Honolulu City Council members and the post-DEIS "two letters" (FTA Control # 091106-002) from downtown interests:

There was actually one letter from two different downtown interests.  
It was dated Oct. 29, 2009 and addressed to Leslie.

Peter sent the reply letter to each of the interests on December 9, 2009. In the letters, he assured the interests that although their comments were received outside the comment period for the DEIS, that their specific issues would be addressed in the FEIS.

Perhaps the Region could double-check with HTS to ensure that this is the case.

Jim

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